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April 23, 2018

VIA LAWYERS SERVICE

General Counsel

EPA, Region 2 - Edison, NJ

Environmental Center

2890 Woodbridge Ave.

Edison, NJ 08837-3679

Re: *Kevin Ball v New Jersey Department of Environmental Protection.*

Case No.: L- 004880-17 HUDSON COUNTY - NEW JERSEY

Touhy Request: Kathleen Foley & Jacqueline Rosioro - EPA, Region 2

Dear Counsel,

I represent the Plaintiff, Kevin Ball in the above action. Attached is a copy of the Complaint that has been filed. This is an action against the New Jersey Department of Environment Protection (NJDEP) pursuant to New Jersey's Conscientious Employee Protection Act (CEPA Action) as a result of NJDEP retaliation against Mr. Ball for his protected "whistleblowing actions" related to the New Jersey Pollutant Discharge Elimination System Permits at the Bayonne Dry Dock Shipyard.¹ Mr. Ball is still employed at NJDEP as an Environment Specialist 3. We are presently engaged in discovery.

Pursuant to the Environmental Protection Agency's (EPA) *Touhy* Regulations (40 C.F.R. § 2.401 et seq *et seq.*), undersigned counsel requests on behalf of the Kevin Ball in the above-captioned CEPA Action that Kathleen Foley & Jacqueline Rosioro of the Region 2 Office be produced to testify at deposition regarding certain facts and allegations relating to the CEPA Action as detailed below.

Accordingly, we request that Ms. Foley and Ms Rosioro testify and produce

¹ Described in Complaint ¶ ¶ 3 -7

any relevant documents concerning the following topics, in accord with 40 C.F.R. § 2.402(b):

I. Nature of The Testimony

1. Their experience in dealing with NJDEP, including, inter alia, Kevin Ball, as it relates to the Bayonne Shipyard;
2. The nature of her visits and/or inspections of the Bayonne Shipyard;
3. What they were told by representatives of NJDEP in relation to their inspections of the Bayonne Shipyard and comments that EPA was considering in relation to the Bayonne's Shipyard New Jersey Pollutant Discharge Elimination System permit renewal application ("Renewal Permit");
4. What they were told, and/or learned from Kevin Ball in relation to his inspections the Bayonne Shipyard;
5. The nature of their communications with Kevin Ball regarding NJDEP and the Bayonne Shipyard.

II. Nature of the Documents

1. Any notes or other records that memorializes their dealings with NJDEP, including, inter alia, Kevin Ball, as it relates to the Bayonne Shipyard Renewal Permit.
2. Any notes or other records that memorializes her visits, inspections or communications with NJDEP related to the Bayonne Shipyard Renewal Permit.

III. Reasons Why The Testimony Would Be In The Interests of EPA

As described in the Complaint² EPA delegated authority to NJDEP for the protection of the nation's water from pollutants under the Clean Water Act in 1982 by approving New Jersey Pollutant Discharge Elimination System of permitting. The CEPA Action brought by Plaintiff Ball herein directly involves his whistleblowing actions, including reporting to EPA the illegal activity³ that he

² Complaint ¶¶ 16, 29, 47 - 51, Exhibit G and H

³ Complaint ¶ 48

observed. Moreover, his actions in reporting to EPA, and the threats⁴ that ensued thereafter once he informed to supervisors that he contacted EPA, are not only material to the case, but should be of interest to EPA because it directly involves transparency between EPA and NJDEP which is critical to EPA's interest in protecting the nation's waters and its delegation of authority under the Clean Water Act. As demonstrated above and as alleged in the Complaint, this information is relevant to the CEPA litigation.

Further, these depositions are appropriate because:

- (1) these deposition will not be long and will not be unduly burdensome or otherwise inappropriate;
- (2) since the subject matter covered in these depositions has already been disclosed to the defendant, NJDEP, the disclosure in this setting is appropriate;
- (3) disclosure would not violate any statutes, executive orders, regulations or directives;
- (4) disclosure of the subject information is relevant, appropriate and necessary under the allegations and will not involve any claim of privilege;
- (5) the information sought is not classified; and,
- (6) it will not interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similar confidential commercial or financial information, or otherwise be inappropriate.

We are willing to conduct this deposition at a time and place acceptable to all parties, and will pay the costs of the deposition and any associated reasonable fees. Please advise what dates in June and July that are convenient. If I can provide further information, please feel free to call me.

Sincerely,

BEGELMAN & ORLOW, P.C.

By: 

Marc M. Orlow, Esquire

⁴ Complaint ¶ 49

cc: Martin Burns, Esquire (via regular mail and email w/o enclosure)
Regina Poserina, Esquire
Ross Begelman, Esquire

Enclosures